

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COLBY GOROG, JOSHUA FLINT,
LOUIS ROBINSON and MICHAEL LERRO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ELON MUSK and TESLA, INC.,

Defendants.

Civil Action No.: 1:22-cv-05037-AKH

**PLAINTIFFS' NOTICE OF OPPOSED
CROSS-MOTION TO FILE FOURTH
AMENDED CLASS ACTION
COMPLAINT**

Submitted By:

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NOTICE OF CROSS-MOTION

PLEASE TAKE NOTICE that upon the accompanying memorandum of law, Plaintiffs' memorandum in opposition to Defendants' motion to dismiss the Third Amended Complaint, the proposed Fourth Amended Class Action Complaint (Exhibit "A"), all documents filed with this Court and served on Plaintiffs by Defendants since June 6, 2023, and any other arguments or materials that the Court may consider before this motion is taken under submission, Lead Plaintiffs Colby Gorog, Joshua Flint, Louis Robinson, and Michael Lerro will move this Court before the Honorable Alvin K. Hellerstein, United States District Judge, at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, NY 10007-1312, at a date and time to be set by the Court, for leave to file the accompanying Fourth Amended Complaint ("4AC") pursuant to Rule 15 of the Federal Rules of Civil Procedure.

Rule 15 provides that, "a party may amend its pleading [with] the court's leave," and that, "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Having concurrently filed their response in opposition to Defendants' motion to dismiss the Third Amended Complaint, ECF Nos. 94, 95, filed August 7, 2023, Plaintiffs hereby cross move for leave to amend in response to aforesaid motion, or subsequently after the Court's denial of Plaintiffs' motion to dismiss, based upon new evidence obtained since the Third Amended Complaint was filed in June 2023. The Fourth Amended Complaint neither adds nor subtracts any Plaintiffs, Defendants, or causes of action. Allowing Plaintiffs to file the Fourth Amended Complaint would serve justice and promote judicial efficiency. Further, there would be no substantial or undue prejudice, bad faith, undue delay, or futility.

Through the Fourth Amended Complaint, Plaintiffs seek to accomplish the following objectives:

- To allege several new and conspicuous instances of market manipulation by Defendant Elon Musk which have occurred since June 6, 2023, the day before the Third Amended Complaint was filed. 4AC, ¶¶ 194-200.
- To plead with greater particularity facts pertaining to the ownership of Defendants’ Dogecoin wallets, including Tesla’s investments in Dogecoin, in light of defense declarations, ECF Nos. 89, 90, accompanying Defendants’ motion for sanctions, ECF Nos. 86, 87, filed July 14, 2023. ¶¶ 237-280.
- To plead new facts pertaining to Defendant Musk’s intentions in promoting Dogecoin, on the basis of news reports published only within the past six weeks, regarding sweeping policy changes at X (formerly Twitter). These changes reveal a grand megalomaniacal strategy for control of the internet, utilizing X as an “everything app” modelled on China’s WeChat. In pursuit of this goal, Defendant Musk plans to incorporate numerous added features to X, including cryptocurrency payment processing. Promoting Dogecoin was part and parcel of this grand strategy and has helped enable Musk to pursue these long-term goals at great cost to Plaintiffs and the Class—but Musk’s goals were not clear until now and must be pleaded, to clarify the element of scienter. ¶¶ 316-345.
- To plead with greater particularity facts pertaining to Defendants’ utilization of bots and paid shills to promote Dogecoin on social media, which have become clearer over the past several weeks in light of X (formerly Twitter) policy changes related to ad revenue sharing for so-called “content creators.” ¶¶ 207-215.
- To plead additional facts regarding information communicated to Musk by a renowned expert on blockchain technology during the first half of 2021. These

facts will show that Defendant Musk was aware, the entire time he touted Dogecoin as a supposed viable form of currency, that scaling Dogecoin into a widely adopted currency is virtually impossible. ¶¶ 324-326.

- To plead additional facts clarifying just how intimate and extensive Defendant Musk's relationship to the Dogecoin Foundation, Inc., and to the Dogecoin core development team, is. The importance of this relationship to Musk's long-term strategy in promoting Dogecoin were unclear prior to recent reports of policy changes at X, which have brought this long-term strategy into focus. ¶¶ 91, 335-345.
- To plead facts clarifying that Musk's Dogecoin promotional activities have deliberately been targeted at unsophisticated investors. ¶¶ 216-228.
- To plead with greater particularity the misleading nature of each of Defendant Musk's misstatements pertaining to the Dogecoin cryptocurrency. ¶¶ 91-94, 100-105, 107, 109-110, 126, 128.
- To plead transaction causation (i.e., reliance) with greater particularity. ¶¶ 346-349.
- To plead more succinctly and with greater clarity facts regarding the nature of blockchain technology and how transactions are validated. ¶¶ 27-41.

Because a clear preference exists for cases to be adjudicated on the merits, because the interest of justice requires it, and for the reasons stated in the attached memorandum in support, Plaintiffs respectfully request that the Court grant them leave to file the accompanying Fourth Amended Class Action Complaint.

This motion is opposed by Defendants.

Respectfully Submitted,

DATED: September 6, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of September 2023, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, giving notice to all parties in this action.

/s/Evan Spencer
Evan Spencer, Esq.